

1905-016
Lee Co.

Chancery Causes: W. W. Cornett vs. William R. Johnson &

Marion, Johnston

CA-Debt

T-Property

-Deed

To the Hon. H. A. W. Skeen, Judge of the circuit court for
Lee county, Virginia.

Lee
Humbly complaining, your petitioner, W. W. Cornett, would respectfully represent, and show unto your honor, that on the 5th day of March, 1904, he obtained judgment against Wm. R. Johnson in the circuit court of Lee county for the sum of two hundred and thirty six and ninty eight hundred dollars (\$236.98) with interest thereon from the 12th day of December, 1900, till paid and eight and seventy five hundred dollars cost, an attested copy of said judgment is here filed marked "Exhibit A" and asked to be treated as a part of this bill.

Your petitioner alleges, that on the _____ day of _____, 1904, he had an execution issued on his said judgment directed to the sheriff of Lee county, which has been returned not executed, no property found.

Your petitioner alleges that he has had his said judgment docketed in the Judgment Lien docket in the clerk's office of Lee county and properly indexed, a copy from said judgment lien docket is here filed, marked "Exhibit B" and asked to be made a part of your petitioner's bill.

Your petitioner alleges, that there is now pending in your Honor's court, a suit entitled "Cowan McClung & Co, vs Wm R. Johnson" the object of which, is to enforce judgment liens against the lands and real estate owned by said Johnson and in which a commissioner's account of liens has been taken.

Your petitioner alleges, that said Wm. R. Johnson, on the 30th day of January, 1875, was seized and possessed of a tract of land which he bought of Winwright Moore, containing twenty acres more or less, and fully described in the title bond executed by said Moore to the said Johnson on the day and year aforesaid and signed by said Johnson to Anderson Marcum on the 15th day of October, 1880, and on which your petitioner alleges, that his said judgment is a valid subsisting lien, an attested copy of said ~~xxx~~ title bond is here filed marked "Exhibit C".

Your petitioner alleges that the said Wm. R. Johnson was seized and possessed, or had equitable title to another tract of land, which he purchased from Dave Willis and Willis purchased the same from G. B. Wallen and said Johnson sold said land to Wm. A. Marcum and

(2)

directed said G. B. Wallen with the consent of Willis to convey said lands direct to Marcum.

Your petitioner alleges, that said lands, are fully described in a deed made by W. A. Marcum to his wife Milla Marcum (see deeds filed, marked "Exhibit D, & E")

Your petitioner alleges, that his judgment, as well as the other judgment liens creditors, reported in said cause of Cowan McClung & Co against Wm. R. Johnson and C. M. McClung & Co against Wm. R. Johnson, are valid subsisting liens against the lands. No deed conveying the title against Wm. R. Johnson, has ever been executed, acknowledged and admitted to record.

Your petitioner prays, that the said Wm. R. Johnson and Wm. A. Marcum be made parties defendant to this petition and answer the same, but not on oath, that being waived; that your petitioner be permitted to file his petition in said cases; and that is said judgment lien with those in order of priority, should be enforced against said lands; that a decree be rendered to sell said land, and that, if necessary, your petitioner's bill be treated as a supplementary and amended bill to the bill of Cowan McClung & Co.

Your petitioner prays for all other and further relief generally that the nature of his case may require or to equity seem meet and well and he will ever pray etc.

M. Y. E. J. g-

Costs:

E. Clerk \$8.74

Shff 1.00

atty 15.00

Estimated 5.00

\$29.74

W. W. Cornett

vs. Bill in Chancery

Wm R. Johnson & Co

1904 1st May rules Bill
filed Sp. executed & D.M.

2nd May rules Decree
Nisi confirmed &
cause set for hearing

1904 May Term.

Order & continued.

1st July Rules

Demurred & answer of
defendants filed and
security for costs required
of Plaintiff

Decree Final Sept.

Term 1905.

To the Honorable H. A. W. Skeen, Judge of the Circuit Court for Lee County, Virginia:

The joint and separate demurrer and answer of Wm. R. Johnson and Wm. A. Marcum to a petition filed in this honorable court against them by W. W. Cornett in the Chancery causes of C.M. McClung & Co., and Cowan McClung & Co., against said Johnson. For demurrer thereto these respondents say, that said petition is not sufficient in law for them to be called upon to answer the same, and they demur thereto, and not waiving said demurrer, but relying and insisting thereon, for answer to said petition, or so much thereof as they are advised that it necessary or material for them to answer, answering they say. That they suppose it is true that the said Cornett obtained the judgment in the said petition mentioned, and had the same docketed as alleged, and that execution issued thereon as alleged; and that there is now pending in the said court a suit in equity, entitled Cowan McClung & Co. v. Wm. R. Johnson, the object of which is to enforce judgment liens against said Johnson, ^{and it is true} that on the 3rd day of January, 1875, the said Johnson contracted with one Winright Moore for a small tract of land, then supposed to contain twenty acres, more or less, and for which said tract of land said Moore executed to the said Johnson his title bond as set out in said petition, and that on the 15th day of October, 1880, said Johnson assigned to respondent, Marcum, said title bond, which title bond together with the assignment endorsed thereon was duly recorded in the Clerk's Office of said County, on the 18th day of October, 1897, and therefore said judgment constitutes no lien on said tract of land.

These respondents will now show unto your honor that said Johnson had not paid to said Moore, the purchase money for said tract of land at the time he ~~had~~ assigned said bond to said Marcum, and that afterwards, to-wit, on the 11 day of 1880, the said Marcum paid to the said Moore, pursuant to his agreement with said Johnson and Moore, the sum of \$35.00, the amount then due on the purchase price of said land, and these respondents are advised and so allege, that under the laws of Virginia, that in the event said land is held liable to said judgment, the said

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Marcum is entitled to be subrogated to the common law vendor's lien of said Moore against said land, to the extent of the said \$35.00, with legal interest thereon from the said ____ day of _____, 1880, until paid, and that the same constitutes the first lien on said land.

These respondents will further show unto your honor that said Marcum has had said tract of land in open, exclusive, notorious ^{adverse} possession, claiming it as his own, from the 15th day of October, 1880, down to the present time, and that said adversary possession, they are advised has thereby ripened into a perfect title.) These respondents deny that the said Johnson was seized and possessed of, or had the equitable title to the other tract of land in said petition mentioned, or that he purchased the same from Dave Willis, or that said Willis purchased the same from G. B. Wallen, or that said Johnson sold the same to respondent, Marcum, and directed said Wallen to convey the same to said Marcum. The facts in the case are, however, as follows:- The said Willis had verbally contract^{ed} for said land mentioned in exhibits "D" & "E" with said petition from G. B. wallen, but owed the said Wallen the purchase price of said land, and the said Willis, thereafter, by a verbal agreement, contracted said land to said Johnson, who by a subsequent verbal agreement contracted said land to respondent, wm. A. Marcum, and there still remaining unpaid on the purchase price of said land to said Wallen, the sum of \$100.00, the said Marcum on the 4th day of December, 1880, paid to the said G. B. Wallen the said sum of \$100.00, purchase money as aforesaid, and took from said Wallen and wife their deed of conveyance for said land, as shown by exhibit "D" with said petition, and your respondents are advised and therefore allege that as there was no written agreement between said Wallen and Willis, nor between said Willis and Johnson, nor between said Johnson and Marcum, said Johnson had no right ^{of} title in said land enforcable, either in law or equity, and that the said judgment of the said Cornett, or those of any other creditor of said Johnson, is not and can not be a valid and subsisting lien upon said land.

And now having fully answered said petition, and

denying any and all allegations in said petition, not herein admitted or specifically denied, they pray to be hence dismissed with their reasonable cost herein expended. And they will ever pray &c.

Or & Nail, p.d.

This within answer is excepted to from Eugene 1- to 2
on 2nd page because it sets up no defense -

M.G. Ely
atty for P.

Wm R Johnson &
Wm A Marcum.

advs & Answer.

W. W. Cornett.

Filed 1st July Rules 1904.
H. C. Ewing, Clerk.

W.W.Cornett,Plaintiff,

Against) In Chancery

W.R.Johnson,and others,Defendants.

This cause came on this day to be heard upon the papers formerly read in the cause the report of sale by Commissioner M.G.Ely,and was argued by counsel:

On consideration of which,said report having been filed the time required by law,and being unexcepted to,is approved and confirmed, and the court decrees that said Commisioner pay out the costs in his hands to the parties entitled thereto,and M.G.Ely will execute and deliver to the purchaser a deed to the lands purchased in this cause and said deed being executed and filed and seen and inspected by the Court is approved and confirmed,and nothing further remaining to be done ,the cause is sticken from the docket.

W. W. Corbett,

ns { Preliminary

W. R. Johnston & Co

Entered in C.O. B.8

page 69.

Easter Thru

It a a. Steam

Sept 19th 1905

W.W.Cornett, Plaintiff,

Against) In Chancery,

Wm.R. Johnson and others, Defendant.

This cause came on this day to be heard upon the papers formerly read in the cause, the deposition of witnesses by the defendant ^t W.A.Marcum and was argued by counsel .

On consideration of which the court doth adjudge order and decree that the 100 acre tract in said bill described is not liable to the plaintiff's judgment, that it is no lien on that tract, that the defendant ^t take and hold said tract free from the lien of any judgments against said Johnson, and the court doth further adjudge, that the 20 acres ^{tract} described in the plaintiffs bill is liable to be subjected to the payment of plaintiffs judgment and all other judgments rendered against said Wm.R.Johnson, being liens against said 20 acre tract in the order of their priority. It is therefore further adjudged ordered and decreed.

that the plaintiff W.W.Cornett recover of Wm.R.Johnson the sum of \$236.98 ,with interest thereon from the 12th day of December 1900 till paid and \$8.75 cents costs at law, and the costs of this suit, (recoveries having been taken for the other creditors in the said suit of Cowan McClung & Co. Vs.said Johnson heretofore) and unless said recoveries are paid within 10 days from the rising of this court then M.G.Ely who is hereby appointed Commissioner for the purpose will advertise and sell the 20 acre tract of land described in the said bill, at the front door of the Court house of Lee County, after having advertised the same for at least 30 days by ~~printed~~ notices posted at the front door of the Court house ,and in the vicinity of said land ,said sale will be made on a credit of one and two years from date of sale with interest ,except a sum sufficient to pay costs of this suit and commissions on the sale which will be required to be paid cash in hand, but before said commissioner performs the duties required of him under this decree he will execute bond in the sum of \$100. conditioned according to law and report to court, and this cause is continued.

W. H. Cornett,
as, { Decree -

Wm R Johnson et al

Entered in Chancery
Order B. No. 7
page 5-84.

Enter this

H. A. W. S. C. W.

Feb. 22-1905

W. N. Cornett.

Plaintiff

against
Wm Johnson et als. Defendants } In chancery.

On motion of the defendants, who suggest that the plaintiff is not a resident of this State and that security for costs is required of him, It is ordered that the said W. N. Cornett, ^{or some one for him} execute, before the clerk of this court, a bond in the penalty of Fifty dollars with security, conditioned to pay all costs that may be awarded him and all fees that may ^{be due or} become due the officers of this court, in this cause. And the cause is continued.

W. W. Cornett.

vs { Decree

~~Mr~~ R. Johnson, et al.

Enter this Decree.

~~Heard~~

Decr 15th 1904.

W. W. Cornett.

Plaintiff

against

Wm R Johnson et al. Defendants

In Chancery

This cause came on to be heard upon
the Bill of the plaintiff and exhibits
thereunto, the ~~demurrer~~ answer and answer
of the defendants Wm R Johnson & Wm A
Marcum, and joinder in said demur-
rer and exceptions to said answer,
and ~~general replication to said answer~~
and was argued by Counsel. On consid-
eration thereof the cause is continued.

W. W. Barnett
vs Decree
Wm R Johnson et al

Entered C. B.
No. 7, Page 574, etc

Enter this Decree.
H. A. W. Linn
Sept 21st 1904

W. W. Cornett,Plff.

vs. (In Chancery.

W. R. Johnson, et al.Deft.

By agreement of counsel for the plaintiff and for the defendant
Anderson Marcum, the said Marcum is given until the first July
rules, 1904, to file his answer to the plaintiff's bill, and the
cause is continued.

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J. K.
D. J.
W. J.
W. J.
W. J.
W. J.

W W Carnett
 v { In Chy.
 W R Johnston et al

 Civ. C. B. No. 7
 page 490.

Decree for contin-
 uance

 Entered May 24/06
 H A W. Clerk

cause is continued.
 Rules, 1904, to file his answer to the plaintiff's bill, and the
 Anderson Marcom, the said Marcom is given until the first July
 by agreement of counsel for the plaintiff and for the defendant
 W. R. Johnson, et al Def.
 vs. (In Chancery).
 W. W. Carnett, Plff.

VIRGINIA,

At a Circuit Court continued and held for Lee County at the Court-house thereof on Wednesday the 22nd day of February, 1905.

W. W. Cornett, Plaintiff

Against (In Chancery.

Wm. R. Johnson & others Defendants

This cause came on this day to be heard upon the papers formerly read in the cause, the deposition of witnesses by the defendant W. A. Marcum and was argued by counsel. On consideration of which the Court doth adjudge, ordere and decree that the 100-acre tract in said bill described is not liable to the plaintiffs judgment, that it is no lien on the tract, that the defendant take and hold said tract free from the lien of any judgments against said Johnson, and the Court doth further adjudge, that the 20-acre tract described in the plaintiffs bill is liable to be subjected to the payment of plaintiffs judgment and all other judgments rendered against said Wm. R. Johnson, being liens against said 20-acre tract in the order of their priority. It is therefore further adjudged, ordered and decreed that the plaintiff, W. W. Crockett recover of Wm. R. Johnson the sum of \$236.98, with interest thereon from the 12th day of December, 1900, till paid and \$8.75 cents costs at law, and the costs of this suit (recoveries having been taken for the other creditors in the said suit of Cowan McClung & Co. vs. said Johnson heretofore) and unless said recoveries are paid within 10 days from the rising of this Court then M. G. Ely, who is hereby appointed Commissioner for the purpose will advertise and sell the 20-acre tract of land described in the said bill at the front door of the Court-house of Lee County, after having advertised the same for at least 30 days by notices posted at the front door of the Court-house, and in the vicinity of said land, said sale will be made on a credit of one and two years from date of sale with interest, except a sum sufficient to pay costs of this

Copy.
Clerk box

suit and commissions on the sale which will be required to be paid cash in hand, but before said Commissioner performs the duties required of him under this decree he will execute bond in the sum of \$100, conditioned according to law and report to Court.

And this Cause is continued.

A Copy-Teste:

H. C. T. Curing Clerk.
By M. O. Haulary D.C.

H. H. Cornett

vs } Copy of Decree
J^m R. Johnston et al

Clerk 50¢

Executed by deliver-
ing a true copy
of the within decree
to M. H. Mar. 14
1905 J. W. Gumb.
D.S. for P. M. Ball S. C.

The depositions of Wm. A. Marcum and _____
ke taken by consent of the parties at the law office of James W. Orr
in Jonesville, Virginia on the 8th day of December, 1904, to be read
as evidence in a certain petition pending in the Circuit court
of Lee County, Virginia, in which W. W. Cornett is plaintiff and
the said Marcum and Wm. R. Johnson are defendants.

PRESENT: M. G. ELY Counsel for petitioner
Orr & Noel of Counsel for defendants.

The said William A. Marcum of lawful age and being first
duly sworn deposes and says:

Ques. 1. State your age, residence and occupation?

Ans. I am 69 years old, live on Black water, Lee County, Virgin-
ia and am a farmer.

Ques. 2. Are you one of the defendants in this petition suit?

Ans. I am.

Ques. 3. When you purchased what is known as the 20 acre tract o f
land from Wm. R. Johnson, ~~was there any~~ unpaid purchase
money due from Mr. Johnson to Winright Moore on said land?

Ans. Objected to because the title bond executed by Winright
Moore to Wm. R. Johnson for the said land is the highest
and best evidence, and the competency of this testimony
is objected to because Winright Moore is dead. — *Ely for Peff.*

Ans. Yes sir, there was \$35.00 purchase money owing from Johnson
to Moore.

Ques. 4. Please state who paid that \$35.00, if the same was paid,
and when?

Ans. I paid the \$35.00 and at the time I bought it.

Ques. 5. State whether or not Mr. Johnson assigned to you the
title bond for the said tract of land that he held on
Mr. Moore?

Ans. He did assign said bond to me at the time I made the purchase.

Ques. Objected to because the assignment is the best ev-
idence.
M. G. Ely for Petitioner.

Ques. 6. Did you afterwards have the said title bond recorded?

Ans. I did have said title bond recorded. some time after I made the purchase.

Ques. 7. Please state how you became to be the owner of the two tracts in the bill mentioned known as the 100 acre tract?

Ans. I bought it of William Johnson, the same man, and he bought it from Dave Willis, and then Dave Willis first bought it from Greenberry Wallen, and there was no writing given as I know about, and when I bought the land of Bill Johnson I contracted for it and told him I would not pay for it unless the old man Wallen would give me a deed, as there had been no written contract about it in any way, and I did not pay him for the land until we saw the old man Wallen about it, and I gave Johnson \$450.00 for both tracts, and there was \$35.00 purchase money on the 20 acre tract and \$100.00 on the other tract due to Mr. Wallen. We went to see Mr. Wallen and he said that he would just as soon make me a deed for it as to make it to Johnson, he said that there was \$100.00 coming to him and if I would pay the \$100.00 he would just as soon make me a deed as to make it to Mr. Johnson, and we set a day to go back and make the deed, and we went and he made the deed and I paid him \$100.00 in hand as specified in the deed. And he said there was no title, deed or writing out of him to any one for the land. That he entered the land and it was his. I paid the \$100.00 and he made me the deed for this tract.

That part of the above answer referring to Greenberry Wallen is objected to because of hearsay, and further objected to because Greenberry Wallen is dead. and the evidence is not competent. M.G.Ely,

Ques. 8t. State whether or not you took possession of these two tracts of land after you purchased it.

3.

I did take possession of them at once and moved on them and lived on them and paid the taxes on them ever since, and have the receipts to show.

Objected to because the tax receipt are the best evidence. M.G.Ely/

Ques. 9. State whether or not you have conveyed these two tracts of land to any one at any time, and if so to whom.

Ans. I conveyed them to my wife Mille Marcum and her heirs. I think along about January, 1898.

Ques. 10. Is your wife living on and in possession of this land now?

Ans. She is living on it now, and in possession of the same and has been since my conveyance to her.

Ques. 11 Have you at any since your purchase of these tracts of land had them surveyed, and the number of acres ascertained, and if so, when and by whom, and what number of acres does each tract contain as ascertained by that survey?

Ans. I have. Some four or five years ago, by Josiah Sproles and he ascertained there was 15 acres in the 20 acre piece, and 96 acres in the 100 acre piece.

Not waiving the above objections of the competency of the witness in testifying M. G. Ely for the petitioner proceeds to cross-examine.

Ques. 1. Do you know how much Mr. Johnson gave Moore, or was to give Moore for the 20 acre tract?

Ans. I do not.

Ques. 2. Do you know how much ~~he~~^{to} was to paid for the 100 acre tract ~~and~~ Willis ~~and~~ Wallen.

Ans. 2. I do not know exactly.

Ques. 3. Which one of the tracts do you live on?

Ans. I live on the old tract, the 96 acre tract, the other tract adjoins me, and have cleared some land on both peices

Que. 4. What is ~~the~~^{to} 20 acre tract of land ~~land~~ worth?

Ans. I do not know what it is worth. \$100 would be a big price for it.

4.

Do you know whether or not Johnson had paid Moore anything on the purchase price pf the \$20.00tract before he sold it to you?

Ans. I do not.

Ques. 6. You state that you paid to Moore \$35.00 on the purchase price of the 20 acre tract of land when did you pay that \$35.00?

Ans. When I bought it.

Ques. 7 Why id you pay it to Moore?

Ans. Because Johnson owed it to him he said.

Ques. 8 Did Johnson tell you to pay it to Moore?

Ans. Yes sir.

Ques. 9 Did Johnson tell you that he still owed \$35.00 on this tract of land?

Ans. When I traded I traded for the whole thing all together, and he owed \$35.00 on the 20 acre tract, and \$100.00 on the 100 acre tractand he said if I would pay it off he would sell me the land.

Ques. 10 Why did you not take a deed from Moore when you paid him the \$35.00?

Ans. Moore said that there was no deed in him until the deed was made to him, and when the deed was made to him he would make a deed to me, and he died without making it.

Ques. 11 How did you pay the \$450.00?

Ans. I paid part of it in money and part in property.

Ques. 12 How much property did you pay.

Ans. I paid two mules and a wagon and the balance in money.

Ques. 13 What were they valued at?

Ans. They were valued at \$300.00

Ques. 14 Do you know what the purchase price was between Wallen and Willis on this 100 acre tract?

Ans I do not.

Ques.15 Di you know whether or not Willis had ever paid Wallen

for the land.

Ans. I do not know.

Ques. 16 Do you know what the purchase price was between Wallen and Johnson?

Ans. I do not.

Do you know whether or not ~~Wallen~~ Johnson had paid Willis for the land?

Ans. I do not know.

Ques. 18 Is it not a fact that Johnson paid to Moore the entire purchase money on the 20 acre tract of land ~~at the~~ time he bought it from Moore, and the reason Moore did not make him a deed was because Moore had no deed to the land?

Ans. He did not pay him all the purchase money, because I had to pay \$35.00 pf it.

Ques. 19 How long had Johnson owned the 20 acre tract before he sold it to you?

Ans. I do not know.

Ques. 20 Had he not owned it about about five years.

Ans. It might have been. He lived on this 96 acre tract when he bought that. He bought the entire tract, and then let Winright Moore have it all back except this 20 acre tract. He bought it for the timber that was on it.

Ques. What made you deed all your land to your wife?

Ans. Because I had a spell of sickness and I did not think I would live long, and after her death I knew it would go to her heirs, and I did not want her turned out of a home. I did not owe anything to any one.

Ques. 22 At about the time you made the deed to your wife, is it not a fact that the creditors of Wm. R. Johnson were threatening to bring suit against this land and you conveyed it to your wife thinking you could defeat these creditors?

Ans. No sir. I did not know anything about that until about the time this suit was brought.

Ques. 23 You stated that Wm. Johnson had bought some other land

6.

from Winright Moore, and that he let him have it all back but this 15 or 20 acres, do you know whether this \$35.00 purchase money you paid to Moore was the purchase money on the 20 acre tract or the entire tract.

Ans. It was on the 20 acre tract. Winright Moore had nothing to do with the 96 acre tract.

Ques. Was Winright Moore a man in good circumstances financially?

Ans. I think he was in good circumstances.

Ques. Do you believe he would have waited on Wm. R. Johnson about five years for the payment of \$35.00 purchase money on land?

Ans. Yes sir I think he would.

Signature waived.

The foregoing deposition was taken by consent and by ~~right~~ *like*
~~of~~ consent the witness was ~~sworn~~ *sworn* by James W. Orr Commissioner
in Chancery.

James W. Orr, Commissioner

Wm A Marcum.

adls 3 Depo:

W. W. Barnett.

Filed Dec 8th 1904.

H. E. Ewing.

Alaska.

The deposition of Wm. R. Johnson taken by consent of the parties at the law office of James W. Orr on the 7th day of February, 1905, to be read as evidence in a certain partition suit pending in the Circuit Court of Lee County, Virginia in which W. W. Cornett is plaintiff and the said Johnson and Wm. A. Marcum are defendants.

PRESENT: M. G. Ely Counsel for partitioner
James W. Orr Counsel for defendant

The said Wm. R. Johnson of lawful age and being first duly sworn deposes and says:

Q.1 State your age, residence and occupation?

A. 58 years. Reside in the Pocket Country, Lee County Virginia, and am a farmer.

Q. 2. Are you one of the defendants in this partition suit?

A I am.

Q. 3 When you sold the 20 acre tract of land to Wm. Marcum was there any unpaid purchase money due on the said land to Winright Moore your vendor?

A. I purchased a boundary known as the Flowery Gap land from Winright Moore, of which the 20 acres in controversy was a part. I do not remember what I was to give Mr. ^{Moore} ~~Marcum~~ for the entire tract, I had made him some payments, but do not remember how much. After this he wanted to take back a portion of the tract and we divided the tract, and I let him have a portion of the land back, and I kept a certain boundary known as the 20 acre tract. The 20 acre tract was the portion most desired by me, and he made me pay pretty well for it, but as to whether there was a balance of the purchase money due him on this 20 acres or not I would not be positive, there may have been. After this I sold the 20 acres and the 96 acres to Wm. Marcum, perhaps for \$450.00

(2)

~~Q. 4~~ and if there was any balance of purchase money due Moore on the 20 acre tract, about which I am not certain, it was paid by Mr. Marcum. There was a balance of purchase money on the 96 acre tract going to Greenberry Wallen, but I don't remember how much there was, but Mr. Marcum was to pay that, and I suppose he did because it never come up against me.

Q. 4 Please state in reference to the 20 acre tract from whence it came and through whose hands it passed before you sold it to Mr. Marcum, and whether or not there was any deeds made, or other writings conveying the said 20 acre tract between any of the parties, and tell all about it.?

A. The 20 acre tract originally belong to Greenberry Wallen and was sold by him to a man by the name of Nelson Johnson, so I was informed, then Johnson and Winright Moore swapped lands, and Moore got this 20 acre tract in that way from Nelson Johnson, then Moore sold it along with other lands to me, and I sold it to Marcum. It seems to me that I have heard that Wallen made a deed, or bond or some kind of writing to Johnson. I know of no deed or other writing from Nelson Johnson to Moore. Moore I think gave me a title bond. I think I let Mr. Marcum have it. I made no deed or other writing to Marcum and only turned over the title bond to him, which I suppose I assigned to him.

Q. 5. Please state in the same manner in reference to the 100 acre tract?

A. It was purchased by Dave Willis of Greenberry Wallen, and I bought it from Willis, and I sold it to Marcum, ~~there was no deed that I know of or heard of from Wallen to Willis~~
~~this or other writing~~

AQ. 6 Was there ^{any} ~~no~~ deed that you knew of or heard of from Wallen to willis or other writing?

3.

A. Mr. Willis proposed to sell me the 96 or 1000 acre tract of land, and we agreed on the price, and he was yet owing Mr. Wallen some of the purchase money. He proposed that he and his wife would make me a deed for the land and we met for that purpose, and it was ascertained in some way that Mr. Wallen had never made any deed to Willis, and that he was not in a condition to make any deed on that account. I was to pay the balance of the purchase money to Wallen. After this I sold this tract of land to Mr. Marcum, and my recollection is, that Mr. Marcum and myself knowing that no deed had been made from Wallen went to Mr. Wallen and had him to make the deed to Mr. Marcum, and Mr. Marcum was to pay the balance yet due on the purchase money due Wallen, but I do not remember exactly what the amount was, and Mr. Wallen accordingly made the deed to Mr. Marcum for the 96 acre tract.

CROSS-EXAMINATION

By M. G. Ely for Partitioner.

Q.1 Did Mr. Willis or Greenberry Wallen either one give you a written contract or a title bond for the 96 acres of land deeded by Wallen to Marcum?

A. I do not think I could answer that, it has slipped my mind entirely.

Q.2. How much were you to pay Winright Moore for the whole of Flowery Gap tract of land when you first bought it from him?

A. I have forgotten what the purchase price for the whole was.

Q. What is your best recollection as to the amount you had paid him on the purchase price of the whole land at the time you and him divided the land and he took back part of it, and you kept the 20 acre tract?

A. I had built a house for him and had let him have some

4.

corn and I took back a part of the land, it strikes me I managed to pay him some through his son, but do not remember what amount.

Q.4. Is it not a fact, or is it not your best impression that at the time you divided the land, and you kept the 20 acre tract you had paid him enough to pay for the 20 acre tract of land?

A. That is hard for me to answer. It strikes me that he made me pay some more than what I had paid him, but the amount I do not know now.

Q. 5 What was the 20 acre tract worth then and what is it worth now?

A I thought at the time I was buying it that it might be worth a right smart to me. It was worth perhaps \$100.00 then. I do not know what it is worth now. I have not seen it.

Re-examined in chief by James W. Orr.

Q. 1 State whether or not you took possession of these lands under your purchase and continued in possession until you sold them to Mr. Marcum.

A. I did. I had the 96 acre tract in possession about six years and the 20 acre tract in possession about two or three years under my purchase before selling to Marcum. Since thinking over the matter I am of opinion that Mr. Marcum is right about there being \$35.00 purchase money behind on the 20 acre tract.

And further this deponent saith not.

The signature of this witness is waived, and by consent of the parties this witness is sworn by James W. Orr, Commissioner in Chancery.

James W. Orr, Commissioner in Chancery.

Wm R. Johnson
adv 3 Dec 1905.

W. W. Carnett.

Filed Feb 8th 1905.

H. T. Ewing, Clk.

To the Honorable H.A.W.Skeen, Judge of the Circuit Court of Lee County Virginia:

Your undersigned Commissioner in the Chancery cause of W.W.Cornett against W.R.Johnson and others pending in the Circuit Court of Lee County ,begs to report that pursuant to the decree entered in said cause ,at the Dec.term,1904 of your honor's Court that he on the 15th'day of April 1905,at the front door of the court house sold the tract of land described in the said bill ~~at the~~ as the 20 acre tract and by actual survey 15 acres more or less,and being the tract of described in the title bond given by Wainwright Moore to W.R.Johnson,after having advertised the time required by said decree,at which sale Henrietta Ely became the highest and best bidder at the price of \$50.which purchase money has been paid in full,being an amount barely sufficient to pay costs of suit and commissions on the sale.

Respectfully Submitted.

M. H. Ely
Special Commissioner.

W. W. Barnett, Off.
as ^{Ex} Report of Sale.
^{Ex}
Mr. R. Johnson et al.

Filed Aug 14, 1905:
H. C. Newing
clerk.

Virginia,

At a Circuit Court continued and held for Lee County, at the Court-house thereof, on Saturday the 5th day of March 1904.

W. W. Cornett

Plff.

vs Declaration in debt on a promissory note

WM. R. Johnston

Deft.

The defendant not appearing after being duly summoned it is considered by the Court that the judgment obtained in the Clerks office in favor of the plaintiff against the defendant for (\$236.98) Two hundred and thirty-six dollars and ninety eight cents the amount of the note mentioned in the declaration, waiving the homestead exemptions, and interest thereon, from the 12th day of December 1900, till paid and five per cent attorneys fees and the costs be made final.

A Copy, Teste: W. E. Ewing Clerk.

H. H. Cornett

vs.

Wm R. Johnston

to be made final.

A copy, Teste:

Copy

A

Clarke 20 cts.

W. H. Johnston

Deft.

vs Declaration in debt on a promissory note

W. H. Cornett

Plff.

Court-house thereof, on Saturday the 25th day of March 1904.

At a Circuit Court continued and held for Lee County, at the

Virginia,

Date of Judgment	By what Court rendered	Time of Docketing	Name & description of Parties	Debt, damages, interest & costs	Amount and date of Credits
Feb. 5 1904	Circuit Court Lee County	March 15 th 1904	W. W. Cornett vs Wm R. Johnston	Plff. Deft.	Judgment for \$236.98 with interest from the 12 th day of December 1900, till paid and \$6.92 costs.

Ewing clk. 2.92
tax 1.00
shff. .50
Atty 2.50

Virginia, Lee County to wit:

J. H. C. T. Ewing, Clerk of Lee County in the State of Virginia, do certify that the above is a true copy of a Judgment in favor of W. W. Cornett against Wm R. Johnston, Taken from Judgment Lien Docket No. 4 page 68, as appears of record in my office, and that the same is properly indexed. Given under my hand this the 13th day of April 1904.

J. H. C. T. Ewing Clerk -

"B"

KNOW ALL MEN BY THESE PRESENTS: That I Winroright Moore of the County of Lee and State of Va., am held and firmly bound unto William R. Johnson of said County and State in the penal sum of Two hundred & fifty dollars to be paid to him, his heirs or assigns which payment I bind myself truly to make.

On conditions however, that is to say, that on the 30th day of January 1875, I the said, Winroright Moore, has this day sold and by these presents do hereby sell and deliver to the said William R. Johnson all of a certain parcel of land situate in Lee County, Va., and known as a part of the ~~Flower~~ Gap land and lying near the said Gap, and adjoining the lands of the said W. R. Johnson & others, containing twenty acres more or less, and bounded as follows to-wit: Beginning on an elm near the falls and near the ^{corner} old fifty acre tract, thence a strait line to a poplar and dogwood and thence westwardly to a white oak, thence an oval or level line around the grade of the hill westwardly to where it will intersect the said Johnsons line, thence southwardly along the line of the said Johnsons to a walnut near or at the falls corner of G. B. Wal-lins 500 acre patton, thence eastwardly with the cliff to the beginning.

Now if I the said Winroright More shall well and truly make or cause to be made a good and sufficient title to the above described lands as early a period possible, then this bond to be void, otherwise in full force and effect, and I this day give the said Johnson full possession of the said premises. In witness my hand and seal, day and date above written.

Attest:

Winwright Moore (Seal)

Samuel Moore.

I assign this bond over to Anderson Marcum all the claim that this bond entitled me to, under the within bond. This the 15 day of Oct. 1880.

Wm. R. Johnson.

State of Va. Lee County;

I, Jno. M. Tate a Notary public of said County, do certify that William R. Johnson personally came before me and made oath that Winright More executed the foregoing bond, and was attested by Samuel Moore and acknowledged by Winright More in his presence.

Given under my official signature Oct. 18-97

John M. Tate N. P.

Virginia, Lee County to-wit:

In the office of the Clerk of the County Court for said County, the 18th day of October 1897, this contract was presented and together with the certificate thereto annexed, admitted to record.

Teste: S. V. F. Richmond, Clerk.

A Copy, Teste: W. C. T. Owing Clerk.

(D. B. No. 33 page 514)

Winright Moore
To ~~David Little~~
Wm. R. Johnson

Copy

John M. Tate
N. P.

gives under my official signature Oct. 18-87

of Samuel Moore and acknowledged by Winright Moore in his presence.
that Winright Moore executed the foregoing bond, and was attested
that William R. Johnson personally came before me and made oath
I, John M. Tate a Notary Public of said County, do certify
State of Va. Lee County.

Teste: S. V. P. Richmond,

Clerk.

Clerk 407

(D. P. No. 28 Book 214)

This deed, made this 4th day December 1880, between G. B. Wallen, Theny Wallen his wife of the County of Lee and State of Virginia, of the first part, and William A. Marcum of the second part:

Witnesseth, that the parties of the first part for and in for and in consideration of the sum of One hundred dollars, in hand paid, which is hereby acknowledged, to be in hand paid have this day granted bargained and sold and by these presents, do grant , bargain, sell and convey unto the party of the second part a certain tract or parcel of land situated in the County of Lee, and State of Virginia, lying and being on the waters of Clinch, containing one hundred acres be the same more or less: Beginning on the State line at William Willis fence on a take with the State line to a stake on the conditional line made by Mose Johnson and William Johnson running up a spur to the top of Newmans ridge, to a chestnut and chestnut oak and southeast a straight line to a black walnut near a clift eastwardly with the clift to a stake, a fence made between Thomas Brotherton and Wm. Johnson to two dogwoods at Wm. Willis fence with Wm. Willis fence to the beginning, to have and to hold the said land hereby conveyed to the proper use and behoof him the said William A. Marcum and his heirs forever, and the parties of the first part doath covenant to warrant and defend the lands generally hereby conveyed.

Witness the following signatures and seals, this the day and year first above written.

his
G. B. x Wallen (Seal)
mark

her
Burthena x Wallen (Seal)
mark

County of Lee to-wit:

I. Thos. McPherson a Justice of the County of Lee in the State of Virginia, do certify that G. B. Wallen, whose names is signed to the writing above bearing date on the 4th day of Dec. 1880,

has acknowledged the same before in my County aforesaid.

Given under my hand this Dec. the 4th 1880.

Thos. McPherson J. P.

State of Virginia, Lee County to-wit:

We, Thos. McPherson and Stokley Lawson Justices of the peace for the County of Lee and State of Virginia, do certify that Theney Wallen the wife of G. B. Wallen whose names is signed to the above writing bearing date on the 4th day of Dec. 1880, personally appear ed before us in the County aforesaid, and being examined by us privily and apart from her husband and having the writing aforesaid fully explained to her, she, the said Theney Wallen acknowledged the said writing to be her act and declaired that she had willingly executed the same and does not wish to retract it.

Given under our hands and seals, this Dec. 4th 1880.

Thos. McPherson J. P.

Stokley Lawson J. P.

Virginia, Lee County Clerk's Office Jan. 20th 1881.

The foregoing deed between G. B. Wallen and Theney Wallen his wife of the first part and William A. Marcum of the second part bearing date the 4th day of Dec. 1880, is this day admitted to record upon the certificates of Thomas McPherson and Stokley Lawson Justices of the Peace for Lee County Virginia.

Teste: James W. Orr, Clerk.

A Copy, Teste:

J. H. T. Ewing

Clerk.

(D. B. No. 19 page 191 &c)

(P. B. No. 19 Dec 1916)

A. JOHN, Teste:

Clerk.

Teste: James W. Orr, Clerk.

Justices of the Peace for Lee County Virginia.

Record upon the certificates of Thomas McPherson and Storley Lawson bearing date the 4th day of Dec. 1880, in this day admitted to wife of the first part and William A. Marcus of the second part. The foregoing deed between G. B. Wallen and Thenev Wallen his Virginia, Lee County Clerk's Office Jan. 20th 1881.

Storley Lawson J. P.

Thos. McPherson J. P.

William A. Marcus
From Deed
to B. Wallen

copy
D

Clerk 65 cts.

Deed for the County of Lee and State of Virginia, do certify that we, Thos. McPherson and Storley Lawson Justices of the State of Virginia, Lee County do-wit:

Thos. McPherson J. P.

Given under my hand this Dec. the 4th 1880.

has not acknowledged the same before in my County aforesaid.

This deed, made this the 19th day of January 1898, by and between William A. Markum of the County of Lee and State of Va., of the first part, and Milly Markum wife of the said party of the first part, of the second part;

Witnesseth; that for and in consideration of the love and affection that the said party of the first part has toward ~~the~~ said wife and the party of the second part, and for the further consideration of means she furnished by faithful management to secure means for the payment of a certain tract or parcel of land upon which we now reside, I, the said William A. Markham party of the first part, doth sell, convey and deliver all and every part thereof the said tract of land as aforesaid, which tract or parcel of land is bounded as follows to-wit: Beginning on an oak bush on the Va. & Tenn. line and thence west with said line 130 poles to a stake thence N 16° W 20 poles to a spring, N 39 1/2° W 24 1/2 poles to a hickory N 34° W 14 poles to a sugar tree N 23° W 9 poles to a stake thence N 10° E 10 poles to 7 maples, N 12° E 10 1/2 to a maple thence N 10° W 7 poles to a black oak N 25 1/2 W 10 poles to a large black oak N 17° W 10 poles to a small black oak N 10° W 12 poles to a small chestnut N 6 3/4° W 12 poles to a black oak N 8° W 9 poles to a white oak N 16° W 9 poles to a chestnut N 29 1/2° W 18 poles to a chestnut oak and chestnut on top of Newman Ridge, thence S 40° E 98 poles to a small walnut near a cliff, or falls thence Northeast with the cliff or ledge 100 poles to a stake W. B. Brothertons corner, thence with his line S 35° E 71 poles to two dogwoods Wm. Willis line, thence with said line and lines S 39 1/2° W 15 poles to a stake, thence S 6° E 12 poles to a persimmon S 37° W 13 poles to a white oak sprouts on top of a ridge thence S 29° E 29 poles to a stake, S 35° E 26 poles to the beginning, containing 96 acres. A second parcel bounded as follows to:wit- Beginning at elm W. B. Brothertons corner, thence S 42° W 30 poles to a poplar stump and dogwood N 78 1/2 W 40 poles to a white oak N 78° W 13 poles to a sourwood N 84 1/2 W 11 poles to a white oak thence

S 87° W 11 poles to a poplar S 67° W 11 poles to a white oak S 52° W 11 poles to a small hickory in said Markum line and with the same S 40° E 54 poles to a ^{small} walnut at a cliff or falls, thence N. E. wardly with a ledge 100 poles to a stake corner to W. B. Brotherton and with his line N 22 1/2° E 9 poles to the beginning, containing 15 acres.

All grain property and monies that I now have on hand. To have and to hold the same in fee simple, together with all appurtenances thereunto belonging, and the said party of the first part is lawfully seized of said premises and have a good right to sell and convey the same and will warrant generally the title therein, conveyed to the said party of the second part to her and her heirs or assigns forever, property grain &c.

Witness my signature & seal, day and date above written.

his
W. A. X Markum (Seal)
mark

State of Va., Lee County,

I, Hohn M. Tate, a notary public of said County, do certify that W. A. Markum whose name is signed to the foregoing deed of conveyance bearing even date personally came before me in my County and acknowledged his signature to the said deed and that it was his act and deed for the purpose set forth therein together with the note on margin.

Given under my official signature at office, in Lee County Va., Jan. 19th 1898'

John M. Tate N. P.

Virginia, Lee County to-wit:

In the Office of the Clerk of the County Court for said County, the 16th day of April 1900, this deed was presented, and together with the certificate thereto annexed, admitted to record

Teste: B. M. Morgan, Clerk.

A Copy, Teste: J. H. Ewing Clerk.

(D. B. No. 36 page 102 &c)

(D. B. No. 28 June 1954)

А. С. Савельев

Стор.

Teste: B. H. Morgan, Clerk.

together with the certificate thereto annexed, admitted to record
commonly, the 18th day of April 1900, this deed was pronounced, and

IN THE OFFICE OF THE CLERK OF THE COUNTY COURT FOR SAID
ALABAMA, THE COUNTY RECORDS:

J. H. Face

AS 1041. 1841. 1841.

Given under my official signature of office, in the company
the note on margin.

his not and deed for the purpose not forth therein together with and acknowledged his signature to the said deed and that it was conveyance bearing even date personally came before me in my County that W. A. Martin whose name is signed to the foregoing deed of I, John W. Tate, a notary public of said County, do certify State of Va., Lee County,

1957 (1957)

Witness my signature & seal, day and date above written.

or elsewhere forever, property shall not be

veyed to the said party of the second part to her and her heirs

concern these and will warrant. Generally the title therein con-

and have a good right to sell and

the property of the first party is

5
C
4

to be properly and monies that I now have on hand. To have

1000

with Mrs. John H. No. 1, a sister to the defendant, consisting of

With a ledge 100 feet to a sharp corner to W. B. Proffertown and

200 E 44 Jones to a point of a cliff on this chance N. E. north

all hopes for a small victory in the North Sea and with the same

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon *Wm R. Johnston and*
Wm A. Marcus

to appear at the Clerk's office of the Circuit Court of the County of Lee, at the rules to be held
for the said court, on the *1st* Monday in *May* *1897*, to answer a
petition
~~bill~~ in chancery exhibited against *them* in our said court by *W. W.*

Barnett to answer petition filed in chancery
cause of Cowan McClung & Co. vs. W. R. John-
son and others

And have then there this writ. Witness, *H. E. Ewing*
A. B. Munsey, Clerk of our said Court, at the
court-house, the *14th* day of *May* *1897*, and in the 12th year of the
Commonwealth.

H. E. Ewing Clerk

Exhibited on the 18th day of April, 1904 by
 Delivering a copy of the within summons
 to John M. Johnston, a member of the family
 of Mrs. R. Johnston and explaining to him its
 purpose; Said Mrs. R. Johnston not being found
 at his usual place of abode; Said John M.
 Johnston at the time of delivery of said copy then
 being at the usual place of abode of said
 Mrs. R. Johnston.

E. S. Peter D. S. for
 D. M. Pace. S. C. C.

Form No. 300 1/2

W. M. Barnett

vs.

SUBPOENA
 IN CHANCERY

Mrs. R. Johnston et al

Att. G. C. G.
 P. G.

To first May
 Circuit
 Court.

3

18

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU That you summon

Wm R Johnson and
Wm A Marcus

to appear at the Clerk's office of the Circuit Court of the County of Lee, at the rules to be held

for the said court, on the *1st* Monday in *May* 190*4*, to answer a

petition
~~bill~~ in chancery exhibited against *Therw* in our said court by *W. H. Car-*

nett, filed in chancery cause of Corvan McClung
& Co. vs. W. R. Johnson and others

And have then there this writ.

Witness, *H. B. Ewing*
~~A. B. Munsey~~ Clerk of our said Court, at the

court-house, the *14th* day of *April* 190*4*, and in the 128th year of the

Commonwealth.

H. B. Ewing Clerk.

W. W. Barnett

US. { SUBPOENA
IN CHANCERY

Wm R. Johnston et al

M. G. Ely p. q.

To 1st May Rules.
1904
Circuit Court.

Exhibited by Delivering
a copy of the within
Notice, Somers to
the said W. A. Marcum
this April. the 20. 1904
C. L. McPherson D. S.
for P. M. Ball
S. D.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon *Wm R Johnston and*
Wm A. Marcus

to appear at the Clerk's office of the Circuit Court of the County of Lee, at the rules to be held

for the said court, on the *1st* Monday in *May* *1897*, to answer a

petition
~~bill~~ in chancery exhibited against *them* in our said court by *W. W. Bar-*

nutt to answer petition filed in chancery
cause of Cowan McClung & Co. vs. W. R. John-
son and others

And have then there this writ. Witness, *H. E. Ewing*
A. B. MUNSEY, Clerk of our said Court, at the
court-house, the *14th* day of *April* *1897*, and in the *128th* year of the

Commonwealth.

A Copy Testi:
H. E. Ewing Clerk

For:
Anderson Moore

Form No. 800 $\frac{1}{2}$.

vs.

{

SUBPOENA
IN CHANCERY

p. q.

To

Rules.

Court.